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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/473,592	GIBLIN ET AL.	
	Examiner	Art Unit	
	Necholus Ogden	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- | | |
|---|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 20) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakama et al (4,919,846) or Trimmer et al (3,755,201) or Potocki (5,397,493).

Nakama et al disclose a liquid detergent composition comprising 0.5 to 20% by weight of a surfactant such as anionic, nonionic and cationic surfactants; and optional components such as protease enzymes, UV absorbing agents and fluorescent agents (col. 6, lines 13-36).

Trimmer et al disclose a laundry detergent composition comprising fluorescent dyes, which convert ultraviolet, light to visible light (col. 1, lines 39-46); surfactants such as anionic, nonionic and amphoteric surfactants and enzymes such as proteolytic types (col. 9, lines 45-53).

Potocki discloses a detergent composition comprising surfactants which are invisible ultra violet light (col. 7, lines 60-col. 8, line 5); and enzymes such as protease, amylases and lipase (col. 9, lines 1-8).

Nakama et al or Trimmer et al or Potocki et al do not exemplify applicants preferred bottled composition.

However, it would have been nonetheless obvious to one of ordinary skill to

combine the components of Nakama et al or Trimmer et al or Potocki et al because each of the components are taught in their requisite proportions and absent a showing to the contrary one of ordinary skill would have been motivated to combine the components and exemplify applicant claimed invention. Accordingly, resultant compositions falling within the scope of applicant's claims are considered to have been obvious to one of ordinary skill given Nakama et al or Trimmer et al or Potocki et al do at least generally teach the use of the same ingredients in overlapping weight percentage ranges as explained above, and it would have been obvious for the artisan to have determined with minimum testing additional embodiments beyond those exemplified, i.e., formulations containing additional or equivalent components for use within the Nakama et al or Trimmer et al or Potocki et al disclosure, since the teachings of a reference are not limited to the preferred embodiment (see In re Boe, 148 USPQ 507 (CCPA 1966)) nor to the working examples (see In re Fracalossi, 215 USPQ (CCPA 1982)). With respect to the transparent or translucent bottle, the examiner contends that the bottle limitation would have been obvious to one of ordinary skill in the detergent art, absent a showing to the contrary. Transparent/translucent bottles have been notoriously known in the art for advertisement purposes and are of official notice. Moreover, it has been held in In re Seid 161 F.2d 229, 73 USPQ 431 (CCPA 1947), that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. Furthermore, In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) The court held that the configuration of the claimed disposable plastic container was a matter of *choice

which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant.

2. Claims 1-4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/26315.

WO '315 disclose a filled package of light duty liquid cleaning composition comprising a tinted or untinted bottle containing a light duty liquid cleaning composition which is transparent and is colorless or slightly blue/green or slightly green/yellow (pg. 1, lines 5-10). WO '315 further include 0.05 to 50% by weight of at least one surfactant such as alkyl sulfates, zwitterionic surfactants, nonionic surfactants and mixtures thereof (pg. 5, lines 10-18). The transparent blue or violet tinted/untinted containers such as a bottle in which the liquid has been tinted with a blue or violet fluorescent dye (pg. 6, lines 16-19). Note, see examples.

It would have been obvious for the artisan to have determined with minimum testing additional embodiments beyond those exemplified, i.e., formulations containing additional or equivalent components for use within the WO '315 disclosure, since the teachings of a reference are not limited to the preferred embodiment (see In re Boe, 148 USPQ 507 (CCPA 1966)) nor to the working examples (see In re Fracalossi, 215 USPQ (CCPA 1982)).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225

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USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-9 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-5 of copending Application No. 09/213,044, 09/213,045 and 09/212,982. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: transparent bottle liquid detergent with surfactants, dyes, UV absorbers and enzymes.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholas Ogden whose telephone number is 703-308-3732. The examiner can normally be reached on Monday-Thursday.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3599 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Nicholas Ogden
Primary Examiner
Art Unit 1751

no
November 4, 2000